

AG Contract No.: KR04-1227TRN  
ADOT ECS File No.: JPA 04-015  
Project No.: TEA-MES-0(026)A  
Project: Downtown Pedestrian Path  
Section: Main Street north along the Lewis Street  
alignment to 1<sup>st</sup> Street – Phase I  
TRACS No.: SL528 02D/01C  
Budget Source Item No.: N/A

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF MESA

THIS AGREEMENT is entered into 7th March, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities

4. A project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.

5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE)

6. The State's interest in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 27400  
Filed with the Secretary of State  
Date Filed: 03/07/05

Janice K. Brewer  
Secretary of State

By: Jimmy D. Haenebold

7. The work encompassed in this Agreement consists of design and construction of Phase I of an ADA accessible pedestrian pathway from Main Street north along the Lewis Street alignment to 1st Street, hereinafter referred to as the "Project". The Project includes demolition of existing curbs and pavements, installation of new walking surface, landscaping and irrigation, site furnishings, lighting and directional signs for pedestrian wayfinding. The City will be responsible for design, construction and maintenance; provide electrical power, water connections as necessary and provide landscape and irrigation to the project area. The City will be the lead agency for the Project and all work will be on City-owned land or public right of way. The estimated costs are as follows:

**Design – TRACS No.: SL528 02D:**

Estimated Design Cost	\$60,252.00
Federal-aid funds @ 94.3% of \$60,252.00	<u>\$56,818.00</u>
<b><i>City of Mesa fund @ 5.7% of \$60,252.00</i></b>	<b><i>\$3,434.00</i></b>

**Construction - TRACS No.: SL528 01C**

Estimated Construction Cost (includes 15% CE cost)	\$461,656.00
Federal-aid funds @94.3% of \$450,355.00	\$424,685.00
City funds @5.7% of \$450,355.00	\$25,670.00
Estimated City of Mesa funds @100%	<u>\$11,301.00</u>
<b><i>Estimated Total for City of Mesa</i></b>	<b><i>\$36,971.00</i></b>

<b><i>Total City of Mesa funds for Design and Construction</i></b>	<b><i>\$40,405.00</i></b>
<b><i>Total Federal Funds Capped</i></b>	<b><i>\$481,503.00</i></b>

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The City will:

a. Be responsible for all costs associated with the scoping and environmental determination of the Project.

b. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to design, advertise for, receive and open bids, subject to the concurrence of FHWA and the State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of local self-administration, approved construction documents and the Project scope.

c. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 18 percent (18%) of the cost of construction. Construction administration costs not participated in by FHWA shall be borne by the City.

d. Acquire any necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom as part of the construction of this project.

e. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

f. Should unforeseen conditions or circumstances increase the cost of said Project such that a change in the extent or scope of work called for in this Agreement become necessary, the City shall be obligated to incur and pay for said increased costs.

g. Shall furnish all water for landscape installation during the construction phase, a point of connection (POC) for an underground and automatic irrigation system, and all water thereafter necessary to properly maintain the landscape, all at City expense.

h. Shall allow free public access to the project improvements during normal business hours

i. Provide electrical power, water connections and landscape maintenance during and after the construction phase, all at the City's expense.

j. In accordance with State requirements, submit to State requests for reimbursement of approved expenditures related to construction of the project along with backup documentation of proof of payment.

k. Upon completion of construction, shall provide for, at its own cost and as an annual item in its budget for perpetual and proper maintenance of all improvements including curbing and pavements, lighting, landscaping and irrigation, site furnishings and signage. Additionally, maintenance shall include, but not limited to:

- Electrical power
- Water
- Maintaining healthy landscape plantings
- Eradication of weeds
- Operation and cost of irrigation
- Operation and cost of lighting
- Maintaining safe access to pedestrian facilities

l. Agree to perform maintenance as required to maintain the safety and visual quality as the project was designed, and established at the completion of the Project

m. If requested, consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and federal government.

2. The State will:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for design and construction. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project design and construction funds are available by FHWA for design and construction of the Project, the State and FHWA hereby designate the City as lead agent to contract for and self-administer the Project.

c. Enter into a Joint Project Agreement (JPA) with FHWA on behalf of the City covering the work encompassed in said construction contract and request the authorized federal funds available, including construction engineering and administration costs.

d. Upon execution of this Agreement, make payments to the City up to a maximum not to exceed the federal aid funds shown for the direct actual cost of the construction of the Project, plus construction engineering, after receipt and approval of a reimbursement request.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance, water and electrical power shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds.** Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event

this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Mesa  
City Manager  
P. O. Box 1466  
Mesa, AZ 85211-1466

10. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF MESA**

**STATE OF ARIZONA**  
Department of Transportation

By

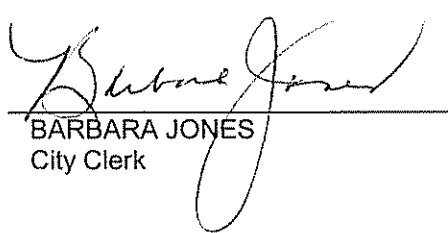
  
MICHAEL HUTCHINSON  
City Manager

By

  
SUSAN TELLEZ  
Contract Administrator

**ATTEST**

By

  
BARBARA JONES  
City Clerk



RESOLUTION NO. 8419

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE DESIGN AND CONSTRUCTION OF A DOWNTOWN PEDESTRIAN PATH FROM MAIN STREET NORTH ALONG THE LEWIS ST ALIGNMENT TO 1<sup>ST</sup> ST

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

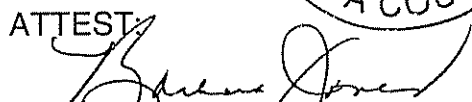
Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the design and construction of a Downtown Pedestrian Path from Main Street north along the Lewis Street alignment to 1<sup>st</sup> Street (ADOT JPA No. 04-015); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.


PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 7<sup>th</sup> day of February, 2005.



ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED:

  
\_\_\_\_\_  
Mayor

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 14<sup>th</sup> day of February, 2004.

Debi Spurr

City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1227TRN (**JPA 04-015**), an Agreement between public agencies, i.e., The State of Arizona and City of Mesa, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 1, 2005

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis  
Assistant Attorney General  
Transportation Section